IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 37/2005

1. Naresh Ramnath Datye,
resident of Vassantnagar,
Sanquelim Goa.

2. Prasad Rajni Wadkar,
resident of Jogadyachi Hali,
Sanquelim Goa.

3. Deepak Anand Chodankar,
resident of Jogadyachi Hali,
Sanquelim Goa.

4. Gajanan Vithal Narvekar,
resident of Sunder Peth,
Sanquelim Goa.

5. Lavu Jaidev Kanekar,
resident of Maulitad,
Sanquelim Goa.

6. Vinayak Raghoba Shetye,
resident of Vasant Nagar,
Sanquelim Goa.

7. Bhikaji Narayan Pednekar,
resident of Jogadyachi Hali,
Sanquelim Goa. ..... Petitioners

Versus

1. Shri Lakshiman Narayan Kanekar,
resident of Maulitad, Sanquelim Goa.

2. Mamlatdar of Bicholim Taluka,
Bicholim.

3. Santosh Chandrakant Verenkar,
resident of Sunderpeth, Sanquelim Goa.

4. Dattaram Govind Narvekar,
resident of Vithalpur, Sanquelim Goa. ..... Respondents

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the petitioners.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Atul Apte, Advocate for the respondent No.1.

Mr. S. R. Rivonkar, Government Advocate for the respondent No.2.

CORAM : R.M. LODHA, J.

DATE : 16th September, 2005.

ORAL ORDER

Heard Mr. M. B. D'Costa, the learned Senior Counsel for the petitioners, Mr. M. S. Usgaonkar, the learned Senior Counsel for the respondent No.1 and Mr. S. R. Rivonkar, the learned Government Advocate for the respondent No.2.

2. The election of Managing Committee of Shree Radhakrisna Murlidhar Saunsthan, Gokulwada, Sanquelim, Bicholim-Goa took place on 8.2.2004. The said election was conducted by the respondent No.4 herein. As per the provisions

contained in the Devasthan Regulations, particularly Article 40, the Managing Committee comprised of a chairman, a treasurer, an attorney and a clerk. The election to substitutes was also held in the said election. The respondent No. 3 was elected as the Chairman and the petitioners Nos. 5, 6 and 7 were elected as the Attorney, the Clerk and the Treasurer respectively. The petitioners No. 1 to 4 were elected as substitutes. An appeal under Article 30 of the Devasthan Regulations was filed by the present respondent No.1 challenging the election of respondent No.3 and petitioners No.5 to 7 as effective members of the Managing Committee. The respondent No.1 also made an application before the Administrative Tribunal for impleadment of substitutes in the appeal. The Administrative Tribunal refused the impleadment of substitutes on the ground of limitation. The Administrative Tribunal then heard the parties and by the impugned order dated 26.11.2004 held that there was no voting by secret ballot as provided under the Statute and the voting was done by count of heads which was a material irregularity, affecting the election process of the Managing Committee. The Administrative Tribunal, accordingly, declared the election of respondents No.1 to 4 therein (the respondent No.3 and the petitioners No.5 to 7 herein) as null and void and directed

fresh election of the Managing Committee to be held. Aggrieved by the said Order dated 26.11.2004, the present writ petition has been filed.

3. As already indicated above, the writ petition has been filed by seven persons. Their coming together and filing this joint Writ Petition is not understandable. In the election held on 8.2.2004, the petitioners No.5 to 7 and the respondent No.3 were elected as effective members of the Managing Committee. It was their election that was under challenge at the instance of respondent No. 1 and has been set aside by the Administrative Tribunal. The election of the petitioners No.1 to 4 as the substitutes was neither under challenge nor has that been set aside by the Administrative Tribunal. In this view of the matter, the petitioners No.1 to 4 cannot be said to have any grievance as their election as substitutes has not been set aside nor declared as null and void by the Administrative Tribunal. The order passed by the Administrative Tribunal has to read in the context of the challenge made in the appeal viz., challenge to the election of the respondent No. 3 and the petitioners No. 5 to 7 herein and not beyond it.

4. Mr. M. B. D'Costa, the learned Senior Counsel for the petitioners submitted that there being only one election process and material irregularity having been found in the entire election process, the election of the petitioners No.1 to 4 who were elected as substitutes in the said election also got affected. I find it difficult to accept the submission of the learned Senior Counsel. The operative part of the order of the Tribunal makes it very clear that the election of the respondents No.1 to 4 therein (the respondent 3 and the petitioners No.5 to 7 herein) was declared as null and void and set aside. The impugned order, thus, does not invalidate the election of the petitioners No. 1 to 4 and the apprehension of these petitioners to that effect is unfounded.

5. Mr. M. B. D'Costa, the learned Senior Counsel for the petitioners then contended that paragraph 5 appended to Article 40 provides that every member of the Committee, effective or substitute, shall hold office for a period for which he had been duly elected or appointed and shall on expiry of the said term be eligible for re-election or re-appointment and a proviso appended thereto that notwithstanding the expiry of the term of office the member of the Committee shall continue in the office until his successor has

been duly elected and has assumed office and, therefore, when the election of the respondent No.3 and the petitioners No.5 to 7 has been declared as null and void and set aside by the Administrative Tribunal, the petitioner No.1 to 4 shall fill the gap having been elected as substitutes and continue as Managing Committee until the expiry of its term and fresh election of Manging Committee was uncalled for. As already noticed above, in so far as the petitioners No.1 to 4 are concerned, they were elected as substitutes and their election having not been set aside by the Administrative Tribunal, they continue as substitutes. However, the election of the Members of the Managing Committee namely, the Chairman, the Treasurer, the Attorney and the Clerk has to be held afresh since their election held on 8.2.2004 has been invalidated and set aside by the Administrative Tribunal. It is not in dispute before me that the election of respondent No.3 and the petitioners No.5 to 7 to the post of the Chairman, the Treasurer, the Attorney and the Clerk was done by count of heads. Obviously, such voting was not permissible under the statute and the Administrative Tribunal cannot be said to have committed any illegality in setting aside the election of the respondent No.3 and the petitioners No.5 to 7 herein being null and void.

6. The impugned order does not suffer from any error of law warranting interference by this Court. The writ petition is dismissed in limine.

R.M. LODHA, J.

ssm.